

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

COLONEL A. ADAMS,

Plaintiff,

— against —

WARNER BROTHERS PICTURES
NETWORK, et al.,

Defendants.

SANDRA L. TOWNES, District Judge

05CV5211
FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JUL 19 2006 ★

P.M. _____
TIME A.M. _____
MEMORANDUM
AND ORDER

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On July 7, 2006, plaintiff Colonel A. Adams ("Adams" or "Plaintiff") filed a motion for default judgment against defendants Warner Brothers Pictures Network, Castle Rock Entertainment, and "Discovery or Science Channel" (collectively "Defendants"). For the reasons discussed below, Plaintiff's request is denied.

Defendants, on February 8, 2006, filed a timely request for leave to file a motion to dismiss the instant action under Federal Rule of Civil Procedure 12(b)(6). This request, filed in lieu of an answer, satisfies Defendants' obligation to respond to Plaintiff's Amended Complaint. *See Yadav v. New York Stock Exch.*, 1992 WL 197409, at *2 (S.D.N.Y. Aug. 4, 1992) ("Rule 12(b)(6) permits a defendant to make a motion to dismiss the complaint for failure to state a claim upon which relief can be granted in lieu of an answer."). Furthermore, the issuance of a default judgment is considered an extreme measure. *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 92 (2d Cir. 1993). "The Second Circuit has made clear its preference that 'litigation disputes be resolved on the merits, not by default.'" *Badian v. Brandaid Communications Corp.*, 2004 WL 1933573, *2 (S.D.N.Y. Aug. 30, 2004) (quoting *Cody v. Mello*, 59 F.3d 13, 15 (2d Cir. 1995)).

Given these circumstances, Plaintiff's motion for default judgment is denied.

SO ORDERED.

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SANDRA L. TOWNES
UNITED STATES DISTRICT JUDGE

Dated: July 17, 2006
Brooklyn, NY